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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

| | | |
|------------------------------|---|--------------------------------|
| 10 UNITED STATES OF AMERICA, |) | Criminal Case No. 08CR1169-WQH |
| |) | |
| 11 Plaintiff, |) | |
| |) | GOVERNMENT'S PROPOSED JURY |
| 12 v. |) | INSTRUCTIONS |
| |) | |
| 13 MIGUEL MENDIOLA-MARTINEZ, |) | |
| |) | Date: September 16, 2008 |
| 14 Defendant. |) | Time: 9:00 a.m. |
| |) | Honorable: William Q. Hayes |
| |) | |
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18 COMES NOW the plaintiff, United States of America, by and through its counsel, Karen P.
19 Hewitt, United States Attorney, and Christina M. McCall, Assistant United States Attorney, respectfully
20 submits the following Proposed Jury Instructions.

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1 COURT'S INSTRUCTION NO. ____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

3 Members of the jury, now that you have heard all the evidence, it is my duty to
4 instruct you on the law which applies to this case. A copy of these instructions will be
5 available in the jury room for you to consult.

6 It is your duty to find the facts from all the evidence in the case. To those facts
7 you will apply the law as I give it to you. You must follow the law as I give it to you
8 whether you agree with it or not. And you must not be influenced by any personal likes
9 or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case
10 solely on the evidence before you. You will recall that you took an oath promising to do
11 so at the beginning of the case.

12 In following my instructions, you must follow all of them and not single out some
13 and ignore others; they are all equally important. You must not read into these
14 instructions or into anything the court may have said or done any suggestion as to what
15 verdict you should return—that is a matter entirely up to you.

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25 Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury
26 Instructions for the Ninth Circuit, § 3.1 [2003 Edition - West Publishing Co.]

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28 [Duties of Jury to Find Facts and Follow Law]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.2 [2003 Edition - West Publishing Co.]

[Charge Against Defendant Not Evidence-Presumption of Innocence-Burden of Proof]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.3 [2003 Edition - West Publishing Co.]

[Defendant's Decision Not to Testify]

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COURT’S INSTRUCTION NO. ____

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.4 [2003 Edition - West Publishing Co.]
[Defendant’s Decision to Testify]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.5 [2003 Edition - West Publishing Co.]

[Reasonable Doubt-Defined]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.6 [2003 Edition - West Publishing Co.]

[What is Evidence]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, [will say in their] closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.7 [2003 Edition - West Publishing Co.]

[What is Not Evidence]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.8 [2003 Edition - West Publishing Co.]

[Direct and Circumstantial Evidence]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.9 [2003 Edition - West Publishing Co.]

[Credibility of Witnesses]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Languages other than English have been used during this trial.

The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning of the non-English words.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.20 [2003 Edition - West Publishing Co.]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 4.17 [2003 Edition - West Publishing Co.]

[Opinion Evidence, Expert Witness]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

You are here only to determine whether the defendant is guilty or not guilty of the charge in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 3.9 [2003 Edition - West Publishing Co.]

[Evidence of Other Acts of Defendant and Statements of Others]

1 COURT'S INSTRUCTION NO. ____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

3 The defendant is charged in the Indictment with being an illegal alien in
4 possession of firearms, in violation of Title 18 United States Code sections 922(g)(5)(A)
5 and 924(a)(2). In order for the defendant to be found guilty of that charge, the
6 government must prove each of the following elements beyond a reasonable doubt:

7 First, the defendant knowingly possessed a firearm and/or ammunition;

8 Second, the firearm and/or ammunition had been shipped or transported from one
9 state to another; and

10 Third, at the time the defendant possessed the firearm and/or ammunition, the
11 defendant was an alien illegally or unlawfully in the United States. An alien is a person
12 who is not a natural-born or naturalized citizen of the United States. Illegally or
13 unlawfully in the United States includes any alien who unlawfully entered the United
14 States without inspection and authorization by an immigration officer and who has not
15 been officially paroled into the United States.

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25 Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury
26 Instructions for the Ninth Circuit, §8.59, 9.1 [2007 Edition - West Publishing Co.]; 27
C.F.R. 478.11; United States v. Ochoa-Colchado, 521 F.3d 1292, 1298 (10th Cir. 2008);
27 United States v. Lopez-Perera, 438 F.3d 932 (9th Cir. 2006).

28 [Firearms-Ammunition-Unlawful Possession]

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 7.1 [2003 Edition - West Publishing Co.]

[Duty to Deliberate]

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COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be--that is entirely for you to decide.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 7.2 [2000 Edition - West Publishing Co.]
[Consideration of Evidence]

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COURT’S INSTRUCTION NO. ____

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 7.3 [2003 Edition - West Publishing Co.]

[Notes]

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COURT’S INSTRUCTION NO. ____

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the Government has proved its case against the defendant beyond a reasonable doubt.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 7.4 [2003 Edition - West Publishing Co.]

[Jury Consideration of Punishment]

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COURT’S INSTRUCTION NO. ____

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, § 7.5 [2003 Edition - West Publishing Co.]

[Verdict Form]